

# **Water Law Primer**

## **WATER SUPPLY AND GROWTH IN THE CLARK FORK RIVER BASIN**

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# Water Right Ownership

- Real Property Interest
- Usufructory (use) right – do not own the water itself
- State owns the water subject to appropriation for beneficial use
- Constitutional protection - cannot affect pre-July 1, 1973 water rights without due process of law

# Basic Water Law Principles

- First in time is first in right
  - Water users with an earlier priority date are entitled to divert their full water right before a junior water user, with a later priority date, diverts any water
  - No sharing of shortages
  - Senior can place a call on any junior water right on a tributary source, including groundwater – do not have to make call on the most junior right
  - Whenever water is not being used by a senior, it is available for use by the next senior junior
  - No preference by purpose of use

# Basic Water Law Principles

- Use it or lose it
  - Beneficial use is the measure, limit & extent of a water right
  - Waste is prohibited
  - Abandonment – not using water for ten or more years, when water is available, raises a rebuttable presumption of abandonment
  - Does not apply to federal & tribal reserved rights

# Water Use Act

- Prior to July 1, 1973
  - Acquire rights by use, filed notices of appropriation, or district court decree
  - Subject to adjudication by the Water Court
  - No pre-approval for changes in use
- After July 1, 1973
  - New water rights require a permit from DNRC
  - Changes in use require authorization from DNRC

# Exceptions to DNRC Permit Requirement – 85-2-306

- Groundwater less than 35 gpm up to 10 acre feet per year
- Stock pond less than 30 af/yr on non-perennial source serving 40 acres or more

# DNRC Permitting Criteria

- 85-2-311 criteria
  - Physically available at point of diversion
  - Legally available during period of appropriation
  - No adverse affect to senior water rights
  - Adequate means of diversion, construction & operation
  - Beneficial use
  - Possessory interest
  - Water quality

# Permit applications cannot be filed in some areas

- Basin closures in highly appropriated areas
  - Upper Missouri River
  - Madison/Jefferson River
  - Teton River
  - Upper Clark Fork River
  - Bitterroot River
  - Milk River
  - Musselshell River
- No new permits for most surface water uses
- Ground water permits are allowed only if impacts to surface water are mitigated



Map of the Pacific Northwest showing the distribution of the Western Tanager. The map includes Washington, Oregon, and California. Various regions are shaded in different colors: light blue for the Pacific Northwest, yellow for the Sierra Nevada, and orange for the Sierra Madre Occidental. Numerous locations are labeled, including Seattle, Portland, Eugene, Medford, and various national forests and parks. A legend in the bottom left corner identifies the symbols used for different types of areas. The date "March 2004" is printed in the bottom right corner.

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50 years. Nine titles of the Design Book's Hardcover Edition have won the American Institute of Architects (AIA) Gold Medal Award for Best Book. The Gold Medal Award is the highest honor bestowed by the AIA. The Gold Medal Award has been given to the following books:

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② **Temperature** (°C) - **Temperature** (°F) **Time** (min)  
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Water Poles 200, 1010	
Water Poles 100, 1010	10.1 eq./mi.
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[illegible][illegible]

1. **Plaza Op-View Plaza (TH)**  
 2. **Shannon L/MS (6 sq. mi.)**  
 3. **Tollman on Overlook Overlook Plaza**  
 4. **U.S.P.S. - Shannon Plaza (TH, TH, 000)**  
 5. **Shannon 1/MS (1,000 sq. mi.)**  
 6. **LINE IN LATIN 04-000000**

Waterfall Lake Temporary Closure (TWC)  
Waterfall 07/25/00 (2,300 sq.m.)

Waterfall and Waterfall Lake Habitat  
41A, 41B, 41C, 41D, 41E, 41F, 41G  
Waterfall 07/25/00 (17,400 sq.m.)

Waterfall Lake (41G)  
Waterfall 07/25/00, 07/26/00, 07/27/00, 07/28/00

[ ] Texas State Park Bonds (74E, 75F, 75B, 76A,B)  
 Cusip# 071400 (0,012 sq.mil)

[ ] Texas Mineral Bonds (71H, 81I, 81A, 81E, 81B, 81U)  
 Cusip# 071400 (75,720 sq.mil)

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# DNRC Change Criteria

- 85-2-402 criteria
  - No adverse affect to other water rights, both senior & junior
  - Adequate means of diversion, construction & operation
  - Beneficial use
  - Water quality
- Generally, need to show no increase in consumptive use

# Burden of Proof for Permits & Changes

- Applicant must prove all of the criteria by a preponderance of evidence regardless of whether an objection is filed
- If permit or change is for more than 5.5 cfs and 4,000 af/yr or is for out-of-state use, burden of proof is clear and convincing evidence & additional criteria apply
- Changes for out-of-state uses require legislative approval